

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 03 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

KIM SOUR SORN,

Plaintiff - Appellant,

V.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant - Appellee.

No. 04-16103

D.C. No. CV-02-01388-KJM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, Magistrate, Presiding

Argued and Submitted February 15, 2006
San Francisco, California

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Kim Sour Sorn (“Sorn”) appeals the judgment of the district court affirming the decision of an administrative law judge (“ALJ”) denying her claim for social security disability benefits. We reverse.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

We must affirm the Commissioner's denial of benefits if it is supported by substantial evidence, and correctly applies the law. *Holohan v. Massanari*, 246 F.3d 1195, 1201 (9th Cir. 2001). The substantial evidence standard requires more than a scintilla of evidence, but less than a preponderance. *Id.* We must consider the record as a whole, evaluating evidence that both supports and detracts from the Commissioner's conclusions. *Id.*

The ALJ determined that Sorn was not disabled based on his rejection of Dr. Nathan's opinions. "An ALJ may reject the uncontradicted medical opinion of a treating physician only for 'clear and convincing' reasons supported by substantial evidence in the record." *Id.* at 1202 (citations omitted). Even if the treating physician's opinion is controverted by other medical evidence, it is still entitled to deference, and should be weighed under the guidelines set forth in the applicable regulations. *Id.*; see 20 C.F.R. § 416.927. Here, the treating physician's assessment of Sorn's mental condition in November 2000 was controverted only as to the duration of Sorn's disability, and his September 2001 assessment was not controverted at all.

The only plausible reason the ALJ gave for rejecting the treating physician's opinion was that the treating physician relied on Sorn's own subjective complaints, which the ALJ found not credible. However, the record does not support the ALJ's

credibility finding. Although credibility determinations are the province of the Commissioner, they must have some basis in logic and the record. “An adjudicator may . . . use ‘ordinary techniques of credibility evaluation’ to test a claimant’s credibility. So long as the adjudicator makes specific findings that are supported by the record, the adjudicator may discredit the claimant’s allegations based on inconsistencies in the testimony or on relevant character evidence.” *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991) (citations omitted). We have even said that “an ALJ cannot reject a claimant’s testimony without giving clear and convincing reasons.” *Holohan*, 246 F.3d at 1208.

The ALJ found that Sorn had falsely testified that she was entirely “unable to communicate in English”; Sorn in fact testified that she knew “a little bit” of English. The ALJ also discredited Sorn’s testimony because he found that she had filed for benefits around the same time as her husband, and because she first sought mental health treatment just as she filed for benefits, stating that “[t]his chronology . . . suggests the possibility of attempting to establish a record for secondary gain rather than for treatment of genuine medical conditions.” However, the record does not indicate that Sorn and her husband filed for disability benefits around the same time, and Sorn’s simultaneous pursuit of mental health treatment and SSI benefits is also not a reasonable basis for discrediting her mental problems.

Given the lingering social stigma of admitting to mental illness, Sorn's explanation to her health care providers that she tried to put off seeking help as long as possible, out of shame – which the ALJ completely ignores – is entirely plausible. Sorn's history of severe trauma at the hands of the Khmer Rouge, and her related paranoia and social limitations, as well as her economic straits, also help explain her hesitation in seeking both medical care and social security benefits.

Sheer speculation unsupported by the record, and distortions of a claimant's testimony, are not a reasonable foundation for an adverse credibility finding. Because the ALJ's rejection of Sorn's treating physician's opinions as to her mental impairments was improper, so was his reliance on a vocational hypothetical that did not consider those impairments. When the vocational expert gave an opinion based on the limitations found by Sorn's treating physician, he concluded that Sorn was disabled.

“The decision whether to remand for further proceedings or for an award of benefits is within our discretion.” *Id.* at 1210. Where the record is fully developed and would clearly require the ALJ to award benefits on remand, remand is unnecessary. *Id.*

The ALJ's reasons for rejecting Sorn's claim were flawed, and the record established through December 2001 does not suggest any more legitimate reason for denying Sorn's claim. Therefore, we remand this case to the district court with instructions to remand to the ALJ for an award of benefits.

REVERSED and REMANDED WITH INSTRUCTIONS.